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5 UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7 OAKLAND DIVISION
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9 JUAN A. CARDENAS and FLORENCIA
10 HERRERA de CARDENAS, individually
and on behalf of all others similarly situated,

11 Plaintiffs,

12 vs.

13 AMERICREDIT FINANCIAL SERVICES
14 INC., and DOES 1-10, inclusive,

15 Defendants.
16

Case No: C 09-04978 SBA

Related to:
C 09-04892 SBA

**ORDER GRANTING
DEFENDANT'S RENEWED
MOTION FOR STAY PENDING
APPEAL**

Docket 92

17 The parties are presently before the Court on the Defendant AmeriCredit Financial
18 Services, Inc.'s ("AmeriCredit") Renewed Motion for Stay Pending Appeal. Dkt. 92.
19 Having read and considered the papers filed in connection with this matter and being fully
20 informed, the Court hereby GRANTS the motion for the reasons set forth below. The
21 Court, in its discretion, finds this matter suitable for resolution without oral argument. See
22 Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

23 **I. BACKGROUND**

24 The parties are familiar with the facts of this case which are summarized herein only
25 to the extent they are relevant to the instant motion. In 2005, Plaintiff Juan A. Cardenas
26 entered into to an Installment Agreement ("Agreement") to facilitate the purchase of a new
27 automobile. The Agreement contained an arbitration clause which provides, among other
28 things, that: IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO

1 PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY
2 CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO
3 CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL
4 ARBITRATIONS.” Paterson Decl. Ex. A, Dkt. 26-1. Mrs. Cardenas is not a signatory to
5 the Agreement.

6 Mr. Cardenas subsequently defaulted on his payments, resulting in the repossession
7 and eventual sale of his car. The proceeds from the sale were less than the amount owed by
8 Mr. Cardenas, thereby creating a deficiency balance. After AmeriCredit attempted to
9 collect the deficiency from Mr. Cardenas, he and his wife filed a class action lawsuit in
10 state court on October 7, 2009, claiming that AmeriCredit had no right to collect from them
11 on the ground that the Agreement failed to provide the requisite information specified by
12 the Rees-Levering Automobile Sales Finance Act, Cal. Civ. Code § 2981, et seq. The
13 Complaint alleges a claim for violation of California’s Unfair Competition Law (“UCL”),
14 Cal. Bus. & Prof. Code § 17200, et seq., and seeks declaratory and injunctive relief.
15 AmeriCredit removed the action to this Court, pursuant to the Class Action Fairness Act
16 (“CAFA”), 28 U.S.C. § 1332(d), on October 29, 2009. Dkt. 1.

17 In response to the Complaint, AmeriCredit filed a motion to compel arbitration and
18 dismiss, or alternatively, to stay, on the grounds that Plaintiff’s claims are subject to the
19 arbitration clause contained in the Agreement. Plaintiffs countered that the arbitration
20 clause is unenforceable, inter alia, because it allegedly is unconscionable and because
21 claims for injunctive relief under the UCL are not arbitrable under California law. The
22 Court denied AmeriCredit’s motion in a written order issued on September 13, 2010.
23 9/13/10 Order, Dkt. 52. Though rejecting Plaintiffs’ contention that the arbitration clause
24 was unconscionable, the Court nevertheless concluded that under the California Supreme
25 Court’s decisions in Broughton v. Cigna Healthplans of Cal., 21 Cal.4th 1066, 1082 (1999)
26 and Cruz v. PacifiCare Health Sys., 30 Cal.4th 303, 316 (2003), Plaintiffs could not be
27 compelled to arbitrate claims for *injunctive relief* under the UCL. Id. at 12-15.

1 On October 12, 2010, AmeriCredit filed a Notice of Appeal under 9 U.S.C.
2 § 16(a)(1)(B) from the Court's Order denying its motion to compel. Dkt. 64. Plaintiffs
3 filed a cross-appeal based on the Court's finding that the arbitration clause was not
4 unconscionable. Dkt. 67. AmeriCredit thereafter filed a motion to stay pending appeal,
5 which the Court granted on March 8, 2011. Dkt. 76, 89. In granting AmeriCredit's motion,
6 the Court reasoned that the Supreme Court's then forthcoming decision in AT&T Mobility
7 LLC v. Concepcion, 131 S.Ct. 1740 (2011) ("Concepcion") would likely be instructive on
8 the issue of whether the arbitration clause at issue is enforceable. 3/8/11 Order at 5, Dkt.
9 89. The Court stayed and administratively closed the action pending a decision in
10 Concepcion, and instructed the parties to notify the Court within thirty days of the Supreme
11 Court's decision. Id. at 8.

12 On April 27, 2011, the Supreme Court rendered its decision in Concepcion and held
13 that the Federal Arbitration Act ("FAA") preempts California case law on
14 unconscionability. The parties filed a joint request to reopen the action and to set a Case
15 Management Conference. Dkt. 90. In that request, AmeriCredit sought to renew its request
16 for a stay, and noted that it had filed a motion for summary reversal before the Ninth
17 Circuit based on Concepcion. Id. at 2.¹ Accordingly, on June 1, 2011, the Court issued an
18 Order reopening the action and setting a briefing schedule on AmeriCredit's renewed
19 motion to stay. Dkt. 91. The motion has been fully briefed and is ripe for adjudication.
20 Dkt. 92, 94 and 95.

21 **II. LEGAL STANDARD**

22 A federal court has discretionary authority to stay an ongoing proceeding, which is
23 "incidental to the power inherent in every court to control the disposition of the causes on
24 its docket with economy of time and effort for itself, for counsel, and for litigants." Landis
25 v. N. Am. Co., 299 U.S. 248, 254 (1936); Britton v. Co-op Banking Group, 916 F.2d 1405,
26

27 ¹ Under Ninth Circuit Rule 3-6(a), a party may move for summary reversal based,
28 inter alia, on an intervening court decision.

1 1412 (9th Cir. 1990) (district court has the discretion to stay an action pending the appeal of
2 an order denying a motion to compel arbitration). In determining whether a stay is
3 appropriate, the court must consider “the possible damage which may result from the
4 granting of a stay, the hardship or inequity which a party may suffer in being required to go
5 forward, and the orderly course of justice measured in terms of the simplifying or
6 complicating of issues, proof, and questions of law which could be expected to result from
7 a stay.” Landis, 299 U.S. at 254; accord Lockyer v. Mirant Corp., 398 F.3d 1098, 1110
8 (9th Cir. 2005). A district court’s decision to grant or deny a Landis stay is a matter of
9 discretion. See Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059,
10 1066 (9th Cir. 2007). The party proposing the stay bears the burden of proving that such a
11 discretionary stay is warranted. See Clinton v. Jones, 520 U.S. 681, 708 (1997).

12 **III. DISCUSSION**

13 **A. ORDERLY COURSE OF JUSTICE**

14 AmeriCredit contends that its likelihood of succeeding on appeal has substantially
15 increased in light of Concepcion, and therefore, it would be more efficient to await the
16 Ninth Circuit’s ruling on its appeal. In particular, AmeriCredit contends that the two
17 principal cases on which this Court relied in denying its motion to compel arbitration, i.e.,
18 Broughton and Cruz, are no longer controlling or impediments to compelling arbitration in
19 light of Concepcion.

20 In Concepcion, the Supreme Court reviewed the Ninth Circuit’s decision in Laster v.
21 AT & T Mobility LLC, 584 F.3d 849 (9th Cir. 2009), cert. granted sub. nom, AT & T
22 Mobility LLC v. Concepcion, 130 S.Ct. 3322 (May 24, 2010), which had held that a class
23 action waiver provision in an arbitration agreement was unenforceable under the test for
24 unconscionability set forth in Discover Bank v. Super. Ct., 36 Cal.4th 148 (2005). The
25 Supreme Court reversed Laster and held that the FAA preempts California’s Discover Bank
26 rule, and prohibits states from conditioning the enforceability of certain arbitration
27 agreements on the availability of classwide arbitration procedures. Concepcion, 131 S.Ct.
28 at 1744, 1753. The Court explained that “[w]hen state law prohibits outright the arbitration

1 of a particular type of claim, the analysis is straightforward: The conflicting rule is
2 displaced by the FAA.” 131 S.Ct. at 1747.

3 In Broughton and Cruz, the California Supreme Court ruled that certain claims for
4 injunctive relief under the State’s consumer protection laws are not arbitrable. Broughton
5 holds that claims for injunctive relief under the Consumers Legal Remedies Act, Cal. Civ.
6 Code § 1750, et seq., are not subject to arbitration. 21 Cal.4th at 1082. Cruz extended
7 Broughton to claims for injunctive relief under the UCL, to the extent such claims are
8 “designed to prevent further harm to the public at large rather than to redress or prevent
9 injury to a plaintiff.” 30 Cal.4th at 315. Given that both of these cases create an outright
10 prohibition to the arbitration of certain types of claims, the application of Concepcion’s
11 “straightforward” analysis arguably compels the conclusion that the FAA preempts both of
12 those cases. Indeed, another judge of this Court, citing Concepcion, has reached this
13 conclusion. See Arellano v. T-Mobile USA, Inc., No. C 10-05663 WHA, 2011 WL
14 1842712, at *1 (N.D. Cal. May 16, 2011) (“the [FAA] preempts California’s exemption of
15 claims for public injunctive relief from arbitration, at least for actions in federal court.”)
16 (Alsup, J.).

17 Plaintiffs contend that AmeriCredit has waived its preemption argument on appeal
18 because it did not initially raise such an argument in this Court. See Rotec Indus., Inc. v.
19 Mitsubishi Corp., 348 F.3d 1116, 1119 (9th Cir. 2003) (recognizing that the failure to raise
20 an issue in the district court waives the issue on appeal).² AmeriCredit concedes its prior
21 failure to challenge Broughton and Cruz on the grounds that it is now pressing before the
22 Ninth Circuit; namely, that the FAA preempts California law which precludes the
23 arbitration of UCL claims in which the plaintiff is seeking a public injunction.
24 Nonetheless, the question of whether Broughton and Cruz are now preempted by the FAA
25

26 ² Plaintiffs are partially correct. In its reply brief in support of its motion to compel
27 arbitration, AmeriCredit did not argue that the holdings of Broughton and Cruz were
28 preempted by the FAA. Rather, AmeriCredit argued that these cases were inapposite on the
ground that they apply only to “public injunctions,” and that such a remedy was no longer
available under the UCL. 9/13/10 Order at 13-15.

1 under Concepcion presents a purely legal question which the Ninth Circuit has the
2 discretion to consider in the first instance. See Community House, Inc. v. City of Boise,
3 Idaho, 623 F.3d 945, 968 (9th Cir. 2010) (“we may exercise our discretion to consider an
4 issue first raised on appeal if it is a pure question of law and the record is sufficient to
5 review the issue.”). In addition, the court of appeal has the discretion to consider
6 AmeriCredit’s arguments based on a change in the law. See In re Mercury Interactive
7 Corp. Secs. Litig., 618 F.3d 988, 992 (9th Cir. 2010) (stating grounds for discretionary
8 consideration of waived issues). Thus, the Court finds that AmeriCredit’s failure to
9 previously raise the issue of preemption is not necessarily fatal to its appeal or motion for
10 summary reversal.³

11 Alternatively, Plaintiffs argue that even if AmeriCredit’s arbitration clause is
12 deemed enforceable on appeal, the claims of Mrs. Cardenas may proceed in this Court
13 because she is not a signatory to the Agreement containing the arbitration clause.⁴ The
14 Court disagrees. The doctrine of equitable estoppel precludes Mrs. Cardenas from avoiding
15 the arbitration clause contained in the Agreement while simultaneously predicating her
16 UCL claim on alleged infirmities of that document. See Blinco v. Green Tree Servicing
17 LLC, 400 F.3d 1308, 1312 (11th Cir. 2005) (holding that wife who did not sign a
18 promissory note entered into by her husband was equitably estopped from challenging
19 enforcement of the arbitration clause where her claims derived from the note); Washington
20

21 ³ AmeriCredit also contends that the matter of FAA preemption affects “the choice
22 of forum,” and therefore, may be raised at any time. Def.’s Reply at 3. This contention
23 lacks merit. The cases cited by AmeriCredit reveal that this rule applies where the issue
24 pertains to whether a state law cause of action is completely preempted by federal law. See
25 Brannan v. United Student Aid Funds, Inc., 94 F.3d 1260, 1266 (9th Cir. 1996) (addressing
26 whether federal Fair Debt Collection Practices Act completely preempted Oregon Unfair
Debt Collection Practices Act); Gilchrist v. Jim Slemons Imports, Inc., 803 F.2d 1488,
1497 (9th Cir. 1986) (finding that an argument based on a preemption defense, as opposed
to complete preemption “implicates only a choice-of-law question that is waived unless it is
timely raised.”). Here, the issue of whether the FAA preempts California case law does not
pertain to the Court’s subject matter jurisdiction, which is predicated upon CAFA.

27 ⁴ Although Plaintiffs raised this argument in its opposition to AmeriCredit’s motion
28 to compel arbitration, the Court considered the issue moot in light of its decision to deny
the motion on other grounds. 9/13/10 Order at 2 n.1.

1 Mut. Fin. Group, LLC v. Bailey, 364 F.3d 260, 267-68 (5th Cir. 2004) (holding under the
2 doctrine of estoppel, a non-signatory wife could not “hav[e] it both ways” by “suing based
3 upon one part of a transaction that she says grants her rights while simultaneously
4 attempting to avoid other parts of the same transaction that she views as a burden—namely,
5 the arbitration agreement”). In other words, Mrs. Cardenas must accept both the benefits as
6 well as the burdens of the Agreement, including its arbitration clause. But even if the
7 arbitration clause is not binding on Mrs. Cardenas—which it is—it would nonetheless be
8 more efficient for the Court and the parties to await the Ninth Circuit’s decision on whether
9 the arbitration clause is enforceable.

10 **B. BALANCE OF HARMS**

11 In its prior stay order, the Court concluded that the balance of harms favored
12 granting AmeriCredit’s motion to stay pending appeal. 3/8/11 Order at 6-8. Specifically,
13 the Court found that if the parties were required to proceed with the litigation and the court
14 of appeals were to subsequently conclude that the arbitration clause is enforceable, the
15 benefits of arbitration—namely, speed, efficiency and cost saving—would be lost. In
16 contrast, the Court concluded that Plaintiff’s claim of harm from the delay was
17 unsubstantiated. In the context of the instant motion, the parties have not presented the
18 Court with any new arguments or evidence to cause it to reevaluate its prior assessment of
19 the balance of hardships, which the Court finds continue to weigh in favor of a stay.

20 **IV. CONCLUSION**

21 For the reasons stated above,

22 **IT IS HEREBY ORDERED THAT:**


- 23 1. Defendant’s renewed motion to stay is GRANTED.
- 24 2. The Clerk shall administratively close the instant action. Within thirty days
25 of the Ninth Circuit’s resolution of the appeal in this action, the parties shall file a joint
26 request to reopen the case and request that the Court to schedule a case management
27 conference. The joint statement shall specify the parties’ respective proposals for the
28 further scheduling of the action.

1 3. The motion hearing scheduled for July 26, 2011, is VACATED.

2 4. This Order terminates Docket 92.

3 IT IS SO ORDERED.

4 Dated: July 19, 2011


SAUNDRA BROWN ARMSTRONG
United States District Judge